Supreme Court, U.S.
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No. 04-0126

IN THE

SUPREME COURT OF THE UNITED STATES

The State of Illinois,
Petitioner,
vs.

Mary Braggs,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a court must consider a defendant's mental capacity when determining whether the defendant was "in custody" for purposes of Miranda v. Arizona?

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BRIEF IN OPPOSITION

Respondent respectfully urges this Court to deny the petition for writ of certiorari to the Illinois Supreme Court.

OPINIONS BELOW

The opinion of the Illinois Supreme Court is reported at 209 Ill. 2d 492 (2004). The opinion of the Illinois Appellate Court, First District is reported at 335 Ill. App. 3d 52, 779 N.E.2d 475 (2002). The November 17, 2000, order of the circuit court denying the respondent's motion to suppress is unreported. The opinion of the Illinois Appellate Court, First District, in the respondent's first direct appeal is reported at 302 Ill. App. 3d 602, 707 N.E.2d 172 (1998).

STATEMENT OF JURISDICTION

The original order and judgment of the Illinois Supreme Court was entered on December 18, 2003. The State filed a petition for rehearing. The Illinois Supreme Court entered its final order and judgment on April 15, 2004,

when it denied the petition for rehearing and modified its opinion upon the denial of the petition. This petition for a writ of certiorari is filed within ninety days of the final order. The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (A).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part: "No Person... shall be compelled in any criminal case to be deprived of life, liberty, or property, without due process of law..."

STATEMENT OF THE CASE

Because Mary Braggs is retarded and was unfit for trial, the circuit court declined to hold a hearing on her motion to suppress her statements. (C.L. 15) Based on the statements and other evidence, the court found Ms. Braggs "not guilty" of murder and remanded her to the Department of Mental Health during a discharge hearing. (C.L. 13) The Appellate Court reversed and remanded for a hearing on the motion. (C.L. 21)

At the hearing on remand, the court suggested several times during opening statements that Ms. Bragg's statements would not have to be suppressed if she was not in custody when she made the statements. (A. 8, 9, 11) The court commented, at another point, that it did not think anybody disputed that Ms. Braggs was not fit for trial. (B. 8)

Evidence Offered By the Prosecution

Detective Edward Winstead testified for the

prosecution that on April 28, 1993, Don Rudoph and Connie Hall were found murdered in their apartment at 4135 S. Prairie. (A. 14, 36) In the course of the investigation, he tried to locate and talk to a woman named Mary Braggs. (A. 15) On May 7, 1993, he got a call from a woman named Survilla Cameron. (A. 16) Cameron said Mary lived with her at 4839 S. Michigan. (A. 17, 36) Mary was illiterate and mentally incompentent; and Ms. Cameron was Mary's sister and her guardian. (A. 16, 17, 49) Winstead and Detective Redmond went to the residence and brought the two women to Area 1. (A. 17-18) He questioned Mary Braggs about the homicides for possibly an hour. (A. 18-20) Communicating was very difficult, as Mary was mentally deficient, in his opinion. (A. 19, 38, 43) She sat with her head down. (A. 38, 50) Sometimes she wouldn't answer; or she would be very slow in answering. (A. 19, 38) She wouldn't answer for minutes at a time; and sometimes Ms. Cameron would repeat the

question or act as an interpreter. (A. 19, 49, 51)

Mary often directed her answers to Ms. Cameron or nodded in agreement with what she said. (A. 19, 50) A lot of Mary's responses were, "I don't know" or "I don't recall." (A. 39) Her favorite expression was, "last thing I remember." (A. 39) At the end of the interview, Winstead drove the two women home. (A. 21)

From the interview, Winstead learned, in summary, that Mary was in the apartment. (A. 20) Two male blacks came by the apartment. (A.20) There was an argument and she hid in the closet. (A.20) When she came out, Connie had been stabbed to death in the bedroom while wearing a white nightgown; Don had been hit in the head with a wrench and strangled to death in the front room. (A. 20-21) This was very accurate as to how the victims died and where they were found. (A. 21)

On May 9, 1993, Winstead returned to the women's

residence with Detective Redmond to see if he could get more information or if Mary recalled more about the two male blacks and the argument. He spoke to Mary in the presence of Ms. Cameron for a half hour or so. Mary still did not answer or was very slow in answering but at least most of the time she spoke to him directly and looked at him when she answered questions. (A. 21- 22) She told him one man was named Ron, who was a friend of a man named Cleo, and the other man was tall. (A. 22-23) Winstead had previously interviewed someone named Ron Thomas who was an acquaintance of both Cleo and the victims. (A. 23)

Winstead later picked up Ron Thomas and a tall man named Mike who was with him and brought them to Area 1. They then picked up Ms. Braggs and Ms. Cameron, and brought them to Area 1. (A. 23) Winstead then interviewed Ms. Braggs for the third time, and showed her photos of Ron Thomas and Mike. (A. 25-26) She went back and forth about

Ron Thomas, saying yes it is and no it isn't. (A. 25-26) Winstead told her they were there at Area 1, and that she could see them in person, but she said no, they were not the guys. (A. 25-26)

Winstead then took the women to the crime scene and asked Ms. Braggs to point out the location of the bodies and the closet where she hid. (A. 27) She correctly pointed out the location of the bodies. (A. 27) The closet she pointed out did not appear to have enough room for both her and its contents. (A.27-28) He then took the women home. (A.28)

On May 12, 1993, he arranged for Ms. Braggs to take a lie detector test. (A. 28, 43) She was cooperative but the examiner said she just didn't register enough emotion for the test to work. (A. 28-29)

Winstead later went to the women's residence again on or about June 24, 1993. (A. 29, 46) Somebody told him they had moved but would let them know he wanted to talk

to them again. (A. 29) Ms. Cameron called him the next day. (A. 29) He and his partner went to the new residence and brought the women back to Area 1. (A. 30) Winstead then told Ms. Cameron they were now looking at Ms. Braggs as a potential suspect in the homicides; and read Ms. Braggs the Miranda rights for the first time. (A. 31-33) She nodded her head after each right. (A. 32) After an hour, Ms. Braggs was arrested. (A. 34) Assistant State's Attorney Gonsalves arrived from Felony Review and had another conversation with the women. (A. 34)

Evidence Offered by the Defense

Dr. Philip Pan testified that he's a psychiatrist with Forensic Clinical Services; he examined Mary Braggs on May 16, 1995 and August 31, 1999. (B. 3-4) She was born in 1941. (B.11) She had been mentally retarded since at least early childhood. (B.4, 27) He noted, among other things, that her grooming and hygiene were marginal; her eye contact

was poor; her speech was simple, somewhat childlike and loud; and her affect was flat. (B. 10-11) In 1996, he concluded she was unfit for trial and not likely to be restored to fitness any time in the near future. (B.4) In 1999, Dr. Pan concluded she did not understand Miranda warnings and in June of 1993, she would not have been able to understand the warnings or to make a knowing and intelligent waiver of her rights. (B. 10-14)

Dr. Linda Wetzel testified she's a clinical psychologist; she examined Mary Braggs on May 21, 1994 and October 1, 1999. (B. 32, 32, 50) Mary was born in 1941. (B. 34) She had a full scale IQ of 54. (b. 36) She could not read or write. (B. 35) She was not sure if she had been to school. (B34) She scored the equivalent of a kindergartner and a five-year-old on an arithmetic test and a vocabulary test. (B. 35, 49) She was able to express herself on only a childish level. (B. 36) Her body odor was bad. (B. 45) Her

clothing was unclean. (B.45) In 1994, Dr. Wetzel concluded Mary was illiterate and mentally retarded. (B. 42) She was unable to understand her Miranda rights and unable to cooperate with her attorney in preparing a defense. (B. 42) She would not have understood her Miranda rights in June of 1993. (B. 44) In 1999, Dr. Wetzel concluded Mary's mental status was unchanged; she remained unable to cooperate with her attorney and unable to cooperate with her attorney and unable to understand her Miranda rights; and it was highly unlikely she ever had the ability to comprehend her Miranda rights to waive them. (B.51)

Evidence Offered By The Prosecution In Rebuttal

Assistant State's Attorney Stanley Gonsalves testified on June 25, 1993, he was assigned to Felony Review. (C.7) Around 2:30 p.m. he went to Area 1 and spoke to Detectives Winstead and Cassidy. (C. 7-8) They told him Mary Braggs was in custody for a double homicide they were

investigating. (C. 8) She was a little slow. (C.9) She could not read or write. (C. 16) Her sister, Survilla Cameron was in the interview room with her. (C. 10) Gonsalves entered the room with the detectives. (C. 9-10) He introduced himself and advised Mary of her Miranda rights. (C.11) Mary did not say anything or acknowledge any of the rights. (C. 13, 17) He tried to explain the rights in simple terms. (C. 13, 18) He asked her if she wished to say anything to him and she nodded her head in the affirmative. (C. 14, 18) They spoke for about an hour. (C. 15) Communication was slow and difficult. (C. 15) He did not take a written statement because he determined she was illiterate. (C. 19)

Judgment Of The Trial Court

The trial court reviewed cases cited by both sides and heard arguments by both sides. (D.2-33) The court said the case was probably the most unique he had seen. (D.2) He noted that custody was an issue he had thought of before.

(D.17) He concluded that Ms. Braggs was not in custody until after her statements to Detective Winstead on June 25, 1993. (D. 43) The court commented that in his view "there is no suggestion whatever that the police did anything physically to Mary Braggs, coercive to Mary Braggs, or in any way did anything to her in the normal context of the term...coerced to give a statement." (D.36) The court commented that her undisputed mental handicap "goes to the weight of those statements, not to whether (sic) those statement(s) were admissible." (D. 45) The motion to suppress was denied with respect to statements to the police but granted with respect to statements to the Assistant State's Attorney. (D. 45) A motion to reconsider was argued and denied. (F. 3, G. 4, H. 2-16) The court reasoned Ms. Braggs could not understand Miranda but Miranda was not required because a reasonable person in her position would not think she was in custody or under arrest when she spoke to the

detectives. (H. 15-16) After further discussion, the court decided a new discharge hearing was not required and reinstated the prior order remanding Mary Braggs to the Department of Mental Health for 5 years. ((I. 1-10) The court reasoned that the judge at the initial hearing relied on testimony about the June 25, 1993, conversation between the police officers and Mary Braggs that was not suppressed. (I. 408) Because the judge relied on evidence that was not suppressed, a new hearing was not necessary. (I. 5-8)

In People v. Braggs, 335 Ill. App. 3d 65, 779 N.E.2d 475 (2002), the Appellate Court reversed the trial court's ruling and remanded the case, directing the trial court to conduct a new suppression hearing and to consider the voluntariness of Ms. Braggs' statement under state evidentiary laws. On February 5, 2003, Petition for Leave to Appeal was granted.

The Illinois Supreme Court allowed the State's

petition for leave to appeal. Modifying the objective reasonable person standard for determining custody for purposes of Miranda, the Illinois Supreme Court held that respondent was in custody when she gave her first statement to the police because "a reasonable person with defendant's mental capacity would have believed he or she was in custody and not free to leave the police station." People v Braggs, 209 Ill. 2d 492 (2004) The Illinois Supreme Court reached that conclusion by citing the Ninth Circuit Court of Appeals' decision in Alvarado v. Hickman, 316 F.3d 841, (9th Cir. 2002), along with several Illinois cases. The Illinois Supreme Court affirmed the appellate court's decision to suppress the statements respondent made to the detective prior to her formal arrest. Given the Illinois Supreme Court's disposition of the custody issue, it refused to reach the voluntariness issue which the appellate court had based its decision. People v. Braggs, 209 Ill.2d at 519.

REASONS FOR DENYING THE PETITION

I.

PETITIONER'S CHALLENGE TO THE ILLINOIS SUPREME COURT'S DECISION SUPPRESSING RESPONDENT'S CONFESSIONS (GIVEN ON JUNE 25, 1993) WHICH THE COURT DETERMINED AS CUSTODIAL IN NATURE – FAILS TO PROVIDE THE REQUISITE CIRCUMSTANCES THAT JUSTIFY THIS COURT'S JURISDICTION UNDER 28 U.S.C. §1257(1), AS THE ILLINOIS DECISION WAS BASED ON ADEQUATE AND INDEPENDENT STATE GROUNDS.

In formulating its decision in the instant case, the Illinois Supreme Court in People v. Braggs, 209 Ill. 2d 492 (2004) cited Alvarado v. Hickman, 316 F. 3d 841 (9th Cir. 2002). However, it is clear that the decision itself is based on adequate and independent state grounds. As such, it is not subject to jurisdiction by this Court under 28 U.S.C. §1257 (1). Thus, the instant petition should be denied.

The United States Supreme Court will not reverse a state court decision which is clearly based on state law that is both adequate and independent. Illinois v. Rodriquez, 497

U.S. 177, 111 L.Ed. 2d 148, 110 S. Ct. 2793 (1990); Michigan v. Long, 463 U.S. 1032, 77 L. Ed. 2d 120, 103 S. Ct. 3469 (1983). Citing Herb v. Pitcairn, 324 U.S. 117, 89 L.Ed. 2d 789, 65 S. Ct. 459 (1945), the Court in Long, stated that its adherence to the above-stated principle is based in part "on the limitation of our own jurisdiction"– as well as its respect for the independence of state courts. 103 S. Ct at 3476. Neither will the use of federal law "as a guide" to invoke the jurisdiction of the Supreme Court, where the state court indicated clearly and expressly that it is alternatively basing its decision on a bona fide separate, adequate, and independent state law. See Michigan v. Long, 463 U.S. 1032, 77 L. Ed. 2d 120, 103 S. Ct. 3469 (1983); Coleman v. Thompson, 501 U.S. 722, 115 L.Ed. 2d 640, 111 S. Ct. 2546 (1991).

In the case at bar, the Illinois Supreme Court cited Alvarado v. Hickman, 316 F. 3d 841 (9th Cir. 2002) – but

only as an example of how age, intelligence and mental makeup have been incorporated into the reasonable man standard. It then concluded that Illinois courts have already modified the reasonable person standard, where juveniles were involved, citing In re J.W., 274 Ill. App. 3d 951 (1995); People v. Armstrong, 318 Ill. App. 3d 607 (2000); and People v. Patel, 313 Ill. App. 3d 601 (2000). In both J.W., and Armstrong (cases involving juveniles), Illinois courts relied on the defendant's age and concluded that they were in "custody" for purposes of Miranda. Miranda v. Arizona, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602 (1966). The Illinois court then logically extended the same rationale to the characteristic of mental capacity as well. People v. Braggs, 209 Ill.2d at 510.

Thus, it is clear that the Illinois Supreme Court only cited Alvarado v. Hickman, 316 F. 3d. 841 (9th Cir. 2002), as a guide, as its decision was actually grounded upon adequate

and independent Illinois law. Therefore, jurisdiction by this Court should not be invoked. Accordingly the petition should be denied.

II.

THE ILLINOIS SUPREME COURT'S DECISION SHOULD BE AFFIRMED WHERE IT IS GROUNDED ON ILLINOIS LAW THAT IS NOT IN CONFLICT WITH DECISIONS OF THIS COURT.

If this Court decides to invoke jurisdiction under 28 USC §1257 (a), the Illinois Supreme Court's decision in People v Braggs, 209 Ill. 2d 492 (2004), should be affirmed as it is not antagonistic with decisions of this Court. Petitioner argues that the Illinois decision conflicts with Yarborough v. Alvarado, 541 U.S. __, 124 S. Ct. 2140 (2004), which overruled Alvarado v. Hickman, 316 F. 3d 841 (9 Cir. 2002), a case cited by the Illinois Court. However, the Court's rejection of Alvarado is not fatal to the instant case, as the two cases are clearly distinguishable.

The Ninth Circuit case involved the Court of Appeals reversing the District Court's denial of a Writ of Habeas Corpus. Thus, pursuant to the standard of review set out in the Antiterrorism and Effective Death Penalty Act of 1996,

the Court was limited to determining only the unreasonableness of the state court's application of clearly established state law. The Court then concluded that the Arizona state court's adjudication – which held that Alvarado was not in custody (pursuant to the objective reasonable man standard) for purposes of Miranda – was not an unreasonable application of clearly established law. However, in the case at bar, the Court has no such limitation – as the instant case is derived from a direct appeal.

Moreover, the Braggs decision is properly rooted in Illinois and federal law. In Stansbury v. California, 511 U.S. 318, 128 L. Ed 2d 293, 1145 S. Ct. 1526 (1994), this Court held that the test for determining "custody" for purposes of Miranda, is "whether a reasonable man in the suspect's position would have believed that he was in custody"... 128 L. Ed. 2d at 299 – or as so aptly stated by the Illinois Supreme Court, "a reasonable man in the suspect's shoes."

See People v. Lucas, 132 Ill. 2d 417 (1989). The Illinois Court then determined that age, intelligence, and mental makeup of the accused (along with the officer's awareness and exploitation of these characteristics) should be analytically intertwined with the reasonable person prong of the custodial question. People v Braggs,, 209 Ill. 2d at 482.

The Braggs court then alluded to a litany of Illinois authority which not only adopted the two-pronged analysis used in the federal courts, but actually modified the reasonable person standard (where a juvenile is involved) to reflect what a reasonable juvenile would have thought about his custodial status – citing specifically People v. Armstrong, 318 Ill. App. 3d 607 (2000) and In re J.W., 274 Ill. App. 3d 951 (1995). In both cases, which involved juveniles (J.W. was 14 and Armstrong 15), the Illinois Appellate Court considered the factors as set out in both Illinois and federal law for determining the custody issue. It then relied heavily

on the defendant's ages and concluded that both individuals were "in custody" for purposes of Miranda.

Thus, the Illinois Supreme Court actually followed the holding of Stansbury; it just provided clarity and logical meaning to Stansbury's requirement of determining what a reasonable man would think in the suspect's shoes. As stated by the Court in Braggs :

> If as in this case, we are concerned with what a reasonable person " in the defendant's shoes" would have thought about his or her freedom of action, the reasonable person we envision must at least wear comparable footwear; otherwise we ought to simply abandon the legal charade that the defendant's characteristics, perspective, and perception mattered at all. People v Braggs, 209 Ill.2d at 508.

Therefore, the Braggs court concluded that for a juvenile suspect, the objective reasonable man standard should reflect the thought of a reasonable juvenile. The court then logically extended this principle to incorporate a suspect's mental capacity, as well – where mentally retarded

persons are more susceptible to coercion, more likely to confess falsely, and less likely to understand their rights, than people of normal intelligence. See P. Hourihane, Earl Washington's Confessions: Mental Retardation and the Law of Confessions, 81 Va Rev. 1471, 1473 (1995).

In United States v. Wauneka, 770 F. 2d 1434 (9th Cir. 1985), a case cited by the Braggs court and factually similarly to the instant case (expect that the defendant possessed normal intelligence), the Ninth Circuit found that Wauneka was "in custody" for purposes of Miranda. By the same token, Mary Braggs, who possessed the IQ equivalent to a 5 year-old, and cannot understand Miranda warnings (R.B. 35-42) – clearly is more limited than Wauneka. Thus, the Braggs court's conclusion that under the circumstances, a reasonable person with Braggs' mental capacity would not have felt free to leave is entirely proper under Illinois law and should be affirmed by this Court. To hold otherwise would

be an egregious misapplication of the law and common sense – especially in a case such as this, where the mental retardation of respondent Braggs is so severe and obvious.

In her concurring opinion in Yarborough v. Alvarado, Justice O'Connor stated that she agreed with the majority only because Alvarado was almost 18 -years-old, which made it difficult for officers to ascertain his juvenile status. Clearly such rational would militate in favor of Braggs in the instant case where her mental retardation is obvious and severe. Yarborough v Alvarado, 124 S. Ct. at 2152.

Likewise, Justice Breyer's dissent suggests that a suspect's age should be incorporated into the reasonable man standard. As stated by Justice Breyer, "the reasonable person standard does not require a court to pretend that Alvarado was a 35 year-old." 124 S. Ct. at 2155. Clearly, the only logical way to analyze the reasonable man standard is to incorporate pertinent characteristics (age, and mental

capacity) of the accused – as the Braggs Court did when it considered Mary Bragg's mental retardation in determining that she was in custody for purposes of Miranda.

Petitioner also contends that certiorari is necessary due to a split in various state courts. However, since granting certiorari is discretionary, such action is unwarranted here, where the Braggs decision is firmly rooted in Illinois law. Likewise, Petitioner's last allegation – that such assessment by police is unworkable – is also misplaced because in the instant case, the mental retardation of Mary Braggs (as stated earlier) besides being both obvious and severe, was known to the police detectives.

CONCLUSION

Based on the foregoing reasons, the petition for a writ of certiorari should be denied. In the alternative if certiorari is granted, People v. Braggs should be affirmed.

Respectfully submitted,

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